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No. 94-122

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

Lawrence C.,

Petitioner

v.

Timothy L., Tina L. and Tyler J.,
a minor child,

Respondents

On Petition for a
Writ of Certiorari
to the Wyoming Supreme Court

# RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

Wyoming Statutes § 14-2-101 to § 14-2-120 authorize a procedure for determining the conflicting legal parent-child relationship existing between a presumed father, the Respondent, an alleged biological father and presumed father, the Petitioner, and a child, T.J. The question presented is to what extent a substantative liberty interest existed in the Petitioner and whether the Wyoming Statutes and procedures afforded to Petitioner by said statutes protected Petitioner's substantative and procedural rights to due process of law and the equal protection of the law.

## PARTIES

Petitioner, Lawrence C. is an individual who alleged he is the biological father of Tyler J. and a statutorily presumed father by virtue of his taking TJ into his home and holding the child out as his own. Respondent Timothy L. is a statutorily presumed father of Tyler J. by virtue of his marriage to Tina L. at the time of conception and birth of Tyler J. and adjudication to be the father by divorce from Tina L. Respondent Tina L. is the mother of Tyler J.

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No. 94-122

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

LAWRENCE C.,

Petitioner

v.

TIMOTHY L., TINA L., and TYLER J.,
A Minor Child,

Respondents

**ON PETITION FOR WRIT OF CERTIORARI TO THE WYOMING SUPREME COURT**

**RESPONDENT'S BRIEF IN OPPOSITION**

**TO THE HONORABLE SUPREME COURT:**

The Respondents, Timothy L. and Tina L., respectfully request that the court deny the writ of certiorari submitted by the Petitioner, Lawrence C.

OPINIONS BELOW

The opinion of the Wyoming Supreme

Court is reported at Slip Opinion No. 93-135. The Opinion of the District Court is unreported. They are reproduced in the appendix to Lawrence C.'s Petition for Writ of Certiorari (pages 1 to 23).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution as applied to Wyoming Statutes § 14-2-101 to § 14-2-120. The Attorney General for the State of Wyoming is required to be served pursuant to 28 U.S.C. 2403 (6).

## STATEMENT OF THE CASE

Timothy L. (known as "L" in the Wyoming State Supreme Court opinion) and Tina L. (known as "TL" in the opinion) were married July 9, 1982. L and TL are the parents of three children including Tyler J. (known as "TJ" in the opinion). L was in

the Air Force stationed in England in 1985. In September of 1985, TL returned to Wyoming without L. Lawrence C. (known as "LC" in the opinion) and TL began a sporadic intimate relationship in November of 1986. L returned to Cheyenne, Wyoming in mid-December of 1986 and lived with TL for a period of time before returning to England. On September 11, 1987, TL gave birth to TJ. The minor child's conception was in December of 1986.

TL and L separated in April of 1988. A divorce action was filed by TL against L on May 25, 1988. The same attorney, who had, on September 16, 1987, five days after the birth of TJ, filed on behalf of LC a paternity action which was subsequently dismissed without prejudice, later represented TL in the divorce and custody

action against L alleging that TJ was born as issue of the marriage between TL and L and that L was the natural father. In the decree of divorce dated January 9, 1989, TL was granted the custody, care and control of the three minor children including TJ, and L was awarded visitation and ordered to pay child support. Since the date of divorce, L has supported TJ through child support payments. After the divorce, L and TL, for a period of time, lived together, with the minor child, TJ, without having remarried. Both TL and L opposed LC's petition for paternity. A Guardian Ad Litem was appointed and appeared in the Wyoming District Court at the hearing, but did not submit a legal brief.

Although L had a vasectomy performed on September 18, 1986, a few months before the

conception of TJ, no verification of the effectiveness of the sterilization has ever been medically procured. After TL and L separated in April of 1988, in accordance with LC's allegations and affidavits accepted by the Wyoming Supreme Court as true, LC, for a limited period of time, held TJ out to the world as his own child by letting TJ and TL live in his apartment rent free, supervising and caring for TJ, providing clothing and other items, and introducing TJ as his son to other persons.

At the time of the conception of TJ and at the time of birth of TJ, TL and L were husband and wife. In the divorce action between L and TL, the Court judicially found that the child TJ was the child of the marriage. L developed a warm, close, and loving parent-child relationship with TJ. For much of the time since the birth of TJ,

L and TJ havebeen together on a regular basis, L providing child support, shelter, care, advice, society and love. TJ and L have a long term father-son relationship.

## SUMMARY OF THE ARGUMENT

I. This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction.

II. Petitioner was accorded substantative and procedural due process and equal protection pursuant to W.S. § 14-2-101 to § 14-2-120.

## ARGUMENTS AND AUTHORITIES

### I.

### REASONS FOR DENIAL OF WRIT OF CERTIORARI

This case presents no novel question of constitutional law. LC asserted rights as a biological father as against the rights of the presumed father by reason of marriage to

TL at the time of the conception and birth of TJ. LC's position assumes that a biological father's liberty rights, when he has taken the child into his home for a limited time and held the child out as his own, gives him the right to "companionship, care, custody and management of a child which are superior to the rights of a man married to the mother at the time of birth of the child who has developed a familial relationship with emotional attachments derived from the intimacy of daily association." To our knowledge, the Supreme Court has not extended the liberty interest of a biological father to the extent that it is superior to the rights of a presumed father by marriage who has developed a long term familial relationship with the child and has been adjudicated the

father by reason of a divorce between the natural mother and the presumed father.

II

PETITIONERS WERE ACCORDED SUBSTANTATIVE AND PROCEDURAL DUE PROCESS AND THE EQUAL PROTECTION OF THE LAW.

A. No liberty interest existed in Petitioner by virtue of the Supreme Court decision in Michael H. v. Gerald D., 491 U.S. 110 (1989). To the extent a liberty interest existed or may be determined to exist, LC's was protected by the statutory procedure afforded by W.S. §14-2-101 to § 14-2-120 for asserting his rights.

The Wyoming Supreme Court opinion (appendix to Petition for Writ of Certiorari, pgs. 1-23) stated that since LC is a presumed father of TJ, by virtue of his taking the child into his home and holding

the child out as his own, under W.S. §14-2-104(a)(iv), he had standing to maintain the paternity action. The Court held that regardless of how the lower district court may have framed its decision in terms of standing, W.S. § 14-2-102(b) was determinative of LC's claim.

There are five principle decisions of the Supreme Court with regards to a "liberty interest" of unwed fathers and their children. Michael H. v. Gerald D., 491 U.S. 110 (1989), Stanley v. Illinois, 405 U.S. 645, 92 (1972), Stantosky v. Kramer, 455 U.S. 745 (1982), Quilloin v. Walcott, 434 U.S. 246 (1979); or Lehr v. Robertson, 463 U.S. 248 (1985). As noted in Lehr v. Robertson, supra, the mere existence of a biological link does not merit an equivalent constitutional protection. The importance of the familial relationship to the

individuals and to society stems from the emotional attachments derived from intimacy or daily association as well as from the fact of blood relationship. Stanley v. Illinois, 405 U.S. 645 at 657, established a liberty interest of the unwed father in the "children he has sired and raised, and undeniably warrants deference, and absent a powerful countervailing interest, protection." As to the liberty interest, the Wyoming Supreme Court held that it accepted and applied the decision of the United States Supreme Court in Michael H. v. Gerald D., 491 U.S. 110 (1989) and that LC's due process rights were contained in W.S. §14-2-101 to 120. A powerful countervailing interest in a familial relationship in L and TJ deserved protection as provided by Wyoming Statute and Law.

Wyoming Statute § 14-2-102(b), entitled "Presumption of paternity; rebuttal thereof" provided:

"A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the fact is founded on the weightier considerations of policy and logic controls. A presumption is rebutted by a court decree establishing paternity of the child by another man."

The Court further stated:

"The legislature has also provided in §102(b) the standard by which two conflicting presumptions are to be resolved. The presumption founded on the "weightier considerations of policy and logic controls." This court has long recognized the strong state policy in legitimacy, which is difficult to overcome.

[W]e note there is a strong policy against bastardy. Michael H. v. Gerald D., 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91, reh'g denied, 492 U.S. 937, 110 S.Ct. 22, 106 L.Ed.2d 634 (1989). In support of that policy, the Wyoming Legislature has enacted stringent provisions that tend to insure children born during wedlock will not be considered illegitimate. That presumption of paternity is sufficiently strong in certain instances to override even

the fact of biological parenthood."

Matter of Adoption of R.S.C., 837 P.2d 1089, 1093 (Wyo. 1992). The presumption of legitimacy is one of the strongest in law. Matter of Paternity of JRW, 814 P.2d 1256, 1260 (Wyo. 1991).

B. PETITIONERS WERE ACCORDED PROCEDURAL DUE PROCESS PURSUANT TO W.S. § 14-2-101 to § 14-2-120.

Petitioner asserts his procedural due process rights were violated by absence of a hearing. The Wyoming Supreme Court determined that inasmuch as matters outside of the pleadings including factual affidavits of Petitioner and Respondent were submitted in the Wyoming District Court, said dismissal was pursuant to W.R.C.P. Rule 12(b)(6) and W.R.C.P. Rule 56, relating to Motions for Summary Judgment. The Wyoming Supreme Court examined the record from the vantage point most favorable to Petitioner, giving the benefit of all favorable factual

inferences to Petitioner. It accepted Petitioner's contention that he received TJ into his home and held the child out as his own and therefore he was entitled to a presumption of paternity under W.S. § 14-2-102(a)(iv) giving him standing to maintain the action. Summary Judgment procedures allows a party to submit evidence by affidavit, but assumes as true all of Petitioner's allegations supported by affidavit. W.R.C.P. Rule 56, Stalkup v. State Department of Environmental Quality, 838 P.2d 705, 708-09 (Wyo. 1992).

As noted by the Wyoming Supreme Court, the plurality of the justices of the United States Supreme Court in the case of Michael H., supra, held that the biological father did not have any procedural or substantative due process rights. The Wyoming Supreme

Court stated that it is irrelevant how one characterizes the holding in Michael H. because the State of Wyoming has provided putative biological fathers like LC with due process rights by enacting statutes found in § 14-2-101 to § 14-2-120. The court also held that L was a presumed father on the basis that TJ was conceived and born during L's marriage to TL; that there are two presumed fathers, and under W.S. § 14-2-102(b), the presumption of paternity

which was founded on the weightier considerations of policy and logic controls in determining the parent-child relationship; that the legislature's policy is to insure that children born during wedlock will not be considered illegitimate and the presumption in favor of the parent-child relationship between TJ and L

controls. Wyoming Statute § 14-2-102(b) declares that the presumption of paternity which arises pursuant to W.S. § 14-2-102(a)(iv) by virtue of L.C. having taken the child into his home and having held the child out as his own is rebutted by the Decree of Divorce establishing paternity of the child in L. W.S. § 14-2-113 provides that a court decree determining the existence of a parent-child relationship is determinative for all purposes. The essence of Wyoming decisions in A v. X, Y and Z, 641 P.2d, 1222 (Wyo. 1982); The Matter of the Paternity of J.R.W., 814 P.2d, 1256 (Wyo. 1991); C.S.P. v. D.D.C., 842 P.2d 528 (Wyo. 1992), are that finality is accorded to a court decree establishing a parent-child relationship and eliminates the uncertainty of such a relationship which could accompany

opening said decrees to collateral attack. The Wyoming Supreme Court held that the presumption of legitimacy is a substantative rule of law based on an overriding social policy derived from the relationship of a presumed father and child at the time of birth. When legitimacy is once judicially established, the presumption of paternity is sufficiently strong to override even the fact of biological parenthood.

C. WYOMING STATUTES, AS APPLIED, AFFORDED TO PETITIONER THE EQUAL PROTECTION OF THE LAW.

LC asserts that he was denied the equal protection of the law. The basis of this allegation is that the Wyoming District Court, as a matter of law, without a trial type hearing, other than the filing of affidavits and a motion hearing, dismissed

the paternity suit for lack of standing. The Wyoming Supreme Court held that the dismissal by the lower court was pursuant to W.R.C.P. 12(b)(6) and W.R.C.P. 56. A hearing in the District Court took place pursuant to the above rules with the benefit of numerous affidavits having been filed on behalf of Petitioner, stating the factual basis for his claim of paternity in detail. The Guardian Ad Litem was present at the motion hearing. Both parties were treated equally and had equal access to the Court.

In A v. X, Y and Z, 641 P.2d at 1226, the Wyoming court rejected a gender based equal protection challenge to the paternity statutes by a man who is not a presumed father. In this case LC was treated as a presumed father as was L. The Petitioner was afforded a hearing and there was no

denial of the equal protection of the law to LC.

## CONCLUSION AND PRAYER

The case presents no novel questions of Constitutional Law. The Wyoming Supreme Court and the District Court of Wyoming accorded petitioner all liberty "Due Process" or "Equal Protection" rights to which he was entitled.

The Respondents L and TL pray that the Court deny Petitioner LC's Petition for Writ of Certiorari, because the case presents no issue appropriate for the Court's review, and because the lower courts' holdings were not in error.

Respectfully submitted,

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